

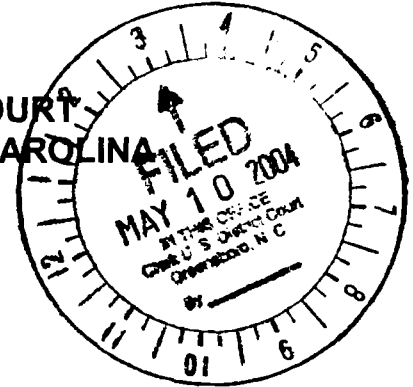
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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



TERRANCE HAYES, a/k/a)
HERUCHUTI ASAR, an individual,)

Plaintiff,)

v.)

1:03CV01196

JA RULE, an individual,)
IRV GOTTI, an individual,)
MURDER INC. RECORDS,)
INTERSCOPE RECORDS, INC.,)
DEF JAM RECORDS INC., and)
UNIVERSAL MUSIC GROUP INC.,)

Defendants)


RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This matter is before the court on Defendants' Motion To Dismiss Plaintiff's Sixth Claim For Relief (docket no. 6). Plaintiff has responded in opposition to the motion and Plaintiff has filed an unopposed motion to amend the complaint. In this posture the matter is ripe for disposition. For the reasons which follow, the motion should be denied as moot.

Plaintiff's original complaint alleges copyright infringement and unfair competition claims under federal law and state law claims of fraud and unfair and deceptive trade practices, all resulting in part from Defendants' obtaining and using Plaintiff's copyright works. The Sixth Claim, which is the subject of the motion to

dismiss, alleges a false designation of origin claim in violation of the Lanham Act, 15 U.S.C. § 1125 (a). Defendants contend that this Sixth Claim is deficient and is subject to dismissal because it does not allege that Plaintiff is the manufacturer or distributor of the compact discs at the heart of this dispute, as required by the recent Supreme Court decision in *Dastar Corp. v. Twentieth Century Fox Film Corp.*, 539 U.S. 23 (2003). In response to the motion, Plaintiff does not so much disagree with Defendants' contention, rather Plaintiff proposes to cure the defect in the complaint by amending the Sixth Claim to allege he is in fact the manufacturer and distributor of the CDs with his copyrighted works on them. In addition, Plaintiff has submitted an amended complaint and a motion to amend. As noted, the motion to amend is unopposed.

By a separate order filed simultaneously herewith, the court has granted the motion to amend thus allowing the amended pleading curing the defect. For this reason, IT IS RECOMMENDED that the Motion To Dismiss (docket no. 6) be DENIED AS MOOT.



Wallace W. Dixon
United States Magistrate Judge

Durham, NC

May 10, 2004